

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

MC ALLEN GRACE BRETHERN)
CHURCH, et al.,)
Plaintiffs,)
v.)
Ken Salazar (in his official capacity),)
U.S. Department of Interior,)
Defendants.)

CIVIL ACTION No. 07:07-060

STATEMENT OF ISSUES ON APPEAL

COMES NOW, Appellants McAllen Grace Brethren, et. al., and file this Statement of Issues.

Appellants request that the Fifth Circuit Court of Appeals answer the following questions on appeal:

1. Should the District Court's decision be reversed because the Government's policy excluding Appellants, for lack of enrollment in a federally recognized tribe, from using eagle feathers and bird parts central and essential to their religious beliefs and practices, is not the *least restrictive means* to protect their alleged compelling interest and therefore violates Plaintiffs' right to freely exercise their Indian religion as protected under the Free Exercise Clause of the First Amendment and the Religious Freedom Restoration Act (RFRA)?
2. Should the District Court's decision be reversed because the Government's policy, excluding Appellants', for lack of enrollment in a federally recognized tribe, from using eagle feathers and bird parts central and essential to their religious beliefs and practices, *substantially burdens* Appellants' right to freely exercise their Indian religion as protected under the Free Exercise Clause of the First Amendment and the RFRA?

3. Should the District Court's decision be reversed because the Government's *policy basis* of *protecting eagle populations* to the extent of prohibiting Appellants' from using eagle feathers and bird parts central and essential to their religious beliefs and practices although Appellants' engage a no-kill policy, *fails* to meet the strict scrutiny analysis for a "*compelling government interest*" under the Free Exercise Clause of the First Amendment and RFRA?
4. Should the District Court's decision be reversed because the Government's *policy basis* of *protecting American Indian religion* and culture to the extent of prohibiting Appellants' from using eagle feathers and bird parts central and essential to their religious beliefs and practices, *fails* to meet the strict scrutiny analysis for a "*compelling government interest*" under the Free Exercise Clause of the First Amendment and RFRA?
5. Should the District Court's decision be reversed because, in the enforcement of BGEPA (Bald and Golden Eagle Protection Act) and the MBTA (Migratory Bird Treaty Act), the Government's substitution of the statutorily prescribed *definition of Indian* with a definition requiring enrollment in a federally recognized tribe violates RFRA and the Free Exercise Clause of the First Amendment by criminalizing Appellants for use of eagle feathers and bird parts considered central and essential to their religious beliefs and practices?

Respectfully submitted:

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CERTIFICATE OF SERVICE

This is to certify that on March 28, 2013, the attached Appellants' Statement of Issues was filed electronically. Notice of the filing will be sent to all parties by operation of the Court's electronic filing system, including the Counsel listed below. Parties may access this filing through the Court's system.

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